ABDUL RAHIM

v.

VALLAPAI SHAIK

SUPREME COURT, KUALA LUMPUR
GEORGE SEAH SCJ
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 235 OF 1986]
28 APRIL 1987

LAND LAW: *Application for removal of private caveat - Trial Judge dismissed application with costs - Appeal - Issues relating to the rights of different parties not determined yet - Whether the caveat should be allowed to remain until the determination of such rights and interests.*

This was an appeal against the decision of the High Court which had dismissed the appellant's application for the removal of the private caveat. The caveat was lodged by the respondent acting as attorney for the purchaser *vide* sale/purchase agreement dated 5 September 1977 entered into between the beneficiaries of the deceased owner of the land and the purchaser.

The learned Judge had dismissed the application on the grounds that a number of issues had been raised relating to the rights and interests of the different parties to the property and that it would only be right and proper that the caveat should be allowed to remain until the determination of such rights and interests. The Supreme Court disagreed and allowed the appeal.

Held:

[1] Following the landmark case of *Eng Mee Yong & Ors. v. V. Letchumanan*, in an application under s. 327 of the National Land Code, the caveator must first satisfy the Court that on the evidence presented his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that the balance of convenience is in favour of the *status quo* until the trial of the action.

[2] The 1977 sale/purchase agreement was a conditional agreement and none of the conditions had been fulfilled.

[Appeal allowed with costs.]

Case referred to:
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212

Legislation referred to:
National Land Code 1965, s. 327

For the appellant - C.V. Das (T.Kuhanandan with him); M/s. Kam Woon Wah & Co.
For the respondent - M.S. Murthi; M/s. Murthi & Partners

JUDGMENT

Hashim Yeop Sani SCJ:

The application in the High Court was under s. 327 of the National Land Code 1965 where by originating summons dated 18 April 1985 the appellant applied for the removal of Private Caveat Presentation no. 2383/84 jilid 25 Folio 61 on land held under certificate of title no. 14860 for Lot. No. 75 Section 6, town of Kuala Lumpur. On 26 May 1986 the learned Judge dismissed the application with costs. The learned Judge was apparently of the opinion that since a number of issues had been raised relating to the rights and interests of the different parties to the property it would only be right and proper that the caveat should be allowed to remain until the determination of such rights and interests. We disagreed and allowed the appeal. We now state our reasons.

It is necessary to revert briefly to the history of the case. One K. Abdul Rahim @ Abdul Rahim s/o Kadar Batcha died intestate in India on 25 March 1977 leaving behind 3 sons and 4 daughters as beneficiaries who were also resident in India. He left however a piece of property situated in this country in the form of the land referred to in the originating summons. On 5 September 1977 the three sons of the deceased and another (who claimed to be a beneficiary) entered into a sale and purchase agreement with one Tajuddin s/o Md. Kassim as purchaser whereby they agreed to sell not only their six-tenths interests as beneficiaries in the property but also the remaining four-tenths interests of the female beneficiaries subject however to their obtaining the consents of all the female beneficiaries. It was agreed in the agreement that the said Tajuddin s/o Md. Kassim was to pay RM5,000 to the vendors towards the purchase price and the balance of the purchase money (RM295,000) to be settled by monthly instalments of RM5,000 to the United Asian bank towards the discharge of the charge against the land. The said Tajuddin s/o Md. Kassim paid the initial RM5,000 and also paid one instalment of RM5,000 to the said bank but thereafter defaulted in all the monthly instalments. The female beneficiaries refused to give their consents. Nothing happened for a few years until 15 October 1981 when the solicitors for the appellant, acting as attorney for the vendors, gave notice to the said Tajuddin s/o Md. Kassim to rescind the 1977 agreement on grounds of the latter's defaults in the payment of the balance of the purchase money and demanded that vacant possession be delivered within one month from the date of the notice. The said Tajuddin s/o Md. Kassim refused to comply with the notice and has apparently been in possession of the said property up to the present day.

Then the appellant with the limited grant of letters of administration granted to him entered into a sale and purchase agreement in respect of the same land on 28 December 1983 with one Soon Seng Co. Sdn. Bhd. for an agreed purchase price of RM1.5 million. Upon being informed of this transaction the respondent acting as attorney for the said Tajuddin s/o Md. Kassim lodged a private caveat on the said land on 7 June 1984 purportedly to protect his principal's interest under the 1977 agreement. On 6 February 1985 the appellant acting as the administrator of the estate of the deceased obtained a court order for the sale of the said land to the said Soon Seng Co. Sdn. Bhd.

Many issues were raised before the learned Judge and also before us on appeal. In our opinion for the purpose of the application before the learned Judge all that the Court need apply is the principle as stated by Lord Diplock in the landmark case of *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 that in an application under s. 327 of the National Land Code the caveator must first satisfy the Court that on the evidence presented his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that the balance of convenience is in favour of the *status quo* until the trial of the action.

Here the 1977 agreement was a conditional agreement and as far as the record shows none of the conditions have been fulfilled. The appellant is the attorney for four of the beneficiaries, but he was not an administrator when he entered into the 1977 agreement as attorney for the beneficiaries. He obtained the limited grant of letters of administration on 12 April 1983.

He has obtained the Court order dated 6 February 1985 to effect the sale and purchase agreement.

Because of the defaults in the payment of instalments by the said Tajuddin s/o Md. Kassim the amount owed by the estate of the deceased to the bank was at 31 January 1982 in the sum of RM214,281.04.

The Court order of sale dated 6 February 1985 was a consent order involving the appellant and the six beneficiaries of the estate including all the four female beneficiaries who had earlier refused their consents to the 1977 agreement.

The appeal was accordingly allowed with costs to the appellant.

Also found at [1987] 2 CLJ 107